Paper No. 17

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ROLAND FJÄLLSTRÖM

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Appeal No. 96-0430
Application 08/045,684[1]

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ON BRIEF

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Before COHEN, MEISTER and McQUADE, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9-16, the only claims remaining in the application. We reverse.

The appellant's invention pertains to a method of treating a pulp slurry of waste paper. Independent claim 9 is further illustrative of the appealed subject and a copy thereof may be found in APPENDIX A of the appellant's brief.

[1] Application for patent filed April 14, 1993.

The references relied on by the examiner are:

Mauer et al. (Mauer)	4,332,638	June 1, 1982
Lamort	4,915,821	Apr. 10, 1990
Fjällström et al. (Fjällström)	5,124,029	June 23, 1992

Claims 9-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lamort or Mauer in view of Fjällström.

According to the examiner:

> Lamort and Mauer et al each teach a method of separating a waste paper pulp suspension into long and short fibers, the long fiber fraction treatment including a screening (11 and/or 12 of Lamort'[s] Fig 3, 15 of Mauer et al). The short fiber fraction undergoes at least flotation and/or washing and each fraction may be thickened, bleached and subsequently recombined.
>
> The only thing not explicitly taught with respect to claim 9, is spraying the pulp slurry in the form of jets (i.e.[,] using a spray filter). However spray filters for fractionating waste pulp suspensions are known as exemplified by Fjallstrom et al. (Note col 7, lines 49 to col 8 line 7). Thus it would have been prima facie obvious to use such a known screening/ filter device design for the fractionation device 3 of Lamort or 7 or [sic, of] Mauer et al in order to obtain the known advantages of this type of filter device, especially absent any evidence of unexpected results from use of same. [Answer, pages 3 and 4.]

We will not support the examiner's position. Independent claim 9 expressly sets forth the steps of spraying the pulp slurry in the form of jets through a gaseous medium and thereafter screening the jets so as to separate the pulp into

first and second aqueous fractions, with the long fibers being contained in the first fraction and the short fibres being contained in the second fraction. According to the appellant's specification:

> By spraying the pulp slurry through a gaseous medium, preferably air, the sprayed long fibres and large impurities, which have relatively large specific surfaces, are retarded by the frictional drag of the surrounding gas medium and thereby are easily blocked by said first screen, whereas short fibres and small impurities, which have a relatively small specific surface, substantially keep their velocity and thereby penetrate said first screen. [Page 5.]

It is thus readily apparent that the spraying of the pulp slurry through the gaseous medium enhances the screening of the fraction containing the long fibres from the fraction containing the short fibres.

While both Lamort and Mauer broadly teach the step of screening pulp slurry in order to divide the pulp slurry into a first fraction containing long fibres and a second fraction containing short fibres neither, as the examiner recognizes, achieves this division by spraying jets of pulp slurry and thereafter screening the jets. In order to overcome this deficiency the examiner has relied on the teachings of Fjällström. While Fjällström at the broadest level does teach the step of spraying jets of pulp slurry through a medium (which

is apparently gaseous) and thereafter screening the jets so as to divide the pulp slurry into first and second fractions (see, e.g., Figs. 14-16), these steps are "utilized for separating the valuable fibres (coarse particles) from printing ink (fine particles)" (see column 7, lines 50-52). At a broader level, Fjällström also states that these steps may be "utilized for fractionating various media and/or be equipped with various sizes of screen holes in the respective fractionation stages" (column 7, lines 65-67). There is, however, nothing in Fjällström which would suggest the desirability of using these steps for the purpose of separating the pulp slurry into a first fraction containing long fibres and a second fraction containing short fibres.

Apparently the examiner is of the opinion that the fact that "spray filters for fractionating waste pulp suspensions are ***known*** as exemplified by Fjallstrom et al" (see the above-quoted portion of the answer; emphasis ours) is a sufficient basis for combining the teachings of Fjällström with those of either Lamort or Mauer in the manner proposed. However, the mere fact that spray filters for fractionating waste pulp suspensions are "known" in the context of removing small particles such as printing ink does

not serve as a sufficient basis for concluding that it would have been obvious to use a spray filter to separate waste pulp suspensions into fractions containing long and short fibres in the claimed method. ***See, e.g., Ex parte Hiyamizu***, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Int. 1988). Instead, the examiner must provide evidence of the motivating force which would impel one skilled in the art to do what the appellant has done (***see Ex parte Levengood***, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Int. 1993). Here, we find no persuasive evidence of such a motivating force.

The decision of the examiner to reject claims 9-16 under 35 U.S.C. § 103 as being unpatentable over Lamort or Mauer in view of Fjällström is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
JAMES M. MEISTER Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN P. McQUADE Administrative Patent Judge	)	

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